THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.16057 of 1996

09.8.2007

Between:

Kopparapu China Venkateswarlu, S/o.Murthaiah

…Petitioner

And

Mandal Revenue Officer, Paloncha Mandal, Khammam District

And others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.16057 of 1996

ORDER:

The petitioner is allegedly owner and possessor of land admeasuring Acs.1.22½ gts in survey No.1/7 situated at Lakshmidevipally village of Paloncha Mandal in Khammam District. The land originally belonged to one Talukunuru Narsaiah, a non-tribal. His son, Peraiah, sold the property to one Kummarikuntla Peda Saidulu, who in turn sold a part of it to the petitioner on 15.12.1989 under an unregistered document. Petitioner was put in possession in an extent of Acs.1.22½ gts. He obtained necessary permission from the Department of Industries and set up a stone crusher unit. In 1985, the Special Deputy Collector (SDC), Tribal Welfare, Paloncha, Khammam District – third respondent herein; issued a notice in Form-E under Rule 7(2) of Andhra Pradesh Scheduled Areas Land Transfer Regulation Rules, 1969 (the Rules, for brevity) to the petitioner. In the said notice dated 11.1.1985, petitioner was asked to show cause as to why he should not be evicted for being in occupation and possession of the land in contravention of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (the Regulation, for brevity), as amended by Regulation I of 1970. On 05.8.1985, SDC ordered ejectment of the petitioner recording that he is in occupation in contravention of the Regulation. Aggrieved by the same, petitioner filed WP No.9272 of 1985 before this Court. The same was disposed of by this Court giving liberty to the petitioner to file appeal before Agent to Government (not a party to the writ petition). He filed appeal and the same was dismissed by the Agent on 07.4.1986 by reason of the order passed in CMA No.34 of 1985.

Petitioner herein filed WP No.5608 of 1986 questioning the order

of the Agent in CMA No.34 of 1985. A learned Single Judge of this Court dismissed the same on 13.5.1986. Petitioner then filed WA No.558 of 1986, which was also dismissed on 22.6.1992 observing that State Government should dispose of the revision petition filed by the petitioner within a period of three months. It is alleged that the revision petition was not disposed of by the Government of Andhra Pradesh. While the same was pending, the Mandal Revenue Officer (MRO), first respondent herein, issued proceedings in Rc.No.B/779/96, dated 24.7.1996, ordering eviction of petitioner from the land admeasuring Acs.1.22½ gts in survey No.1/7 of Lakshmidevipally village. This order is assailed in the present writ petition as illegal and without jurisdiction.

The writ petition was initially heard by Hon'ble the Chief Justice on 08.6.2006. His Lordship recorded the proceedings as under.

> Heard the learned counsel for the parties and perused the record. Sri M.R.K.Choudary, learned Senior Advocate appearing on behalf of the petitioner stated that despite unequivocal direction given by the Division Bench of this Court on 22.06.1992 in Writ Petition No.558 of 1986 filed by the petitioner, the State Government has not decided the revision petition filed by his client and in the meanwhile, the respondents initiated proceedings under the 1905 Act and ordered eviction of the petitioner, which is legally impermissible.
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> In the context of the statement made by the learned counsel for the petitioner, I asked the learned Government Pleader to state whether or not the revision filed by the petitioner has been disposed of. In the pre-lunch session, the learned Government Pleader sought a pass over to seek instructions from the concerned departmental authority for the purpose of making statement regarding the status of the revision petition filed by the petitioner. In the post-lunch session, she made a request for adjournment by saying that the relevant record is not traceable. She requests for adjournment.

Again the matter was called before His Lordhip on 14.6.2006, when learned Government Pleader for Social Welfare brought to the notice of His Lordship that the Government of Andhra Pradesh disposed of the revision petition on 18.2.1988. After noticing the same, Hon'ble the Chief Justice recorded the proceedings as under.

> Learned Government Pleader says that the revision filed by the petitioner had been decided as earlier as on 18.02.1988 and a copy of the order was sent by Collector, Khammam, to the office of Government Pleader. She says that it is difficult to make any statement as to why the order passed in February 1988 was not brought to the notice of the

Division Bench, which passed order dated 22.06.1992 for disposal of the revision petition.

While appreciating the predicament in which the Government Pleader finds herself, I deem it proper to adjourn the case with the direction that copy of order dated 18.02.1988 be placed on the record of this petition. The needful be done within ten days.

The petitioner is given liberty to amend the petition and challenge that order. For this purpose, he is allowed ten days' time. If no application is filed within ten days for amendment of the petition, then the Court will proceed to decide the petition on the assumption that the petitioner does not want to challenge the order by which the revision petition filed by him had been dismissed.

Thereafter the petitioner filed necessary application to amend the writ petition for challenging the Government memo dated 18.2.1988. Necessary application was also filed to implead the Government of Andhra Pradesh as party respondent. This matter is coming up before me from 05.7.2007. Learned Government Pleader was directed to produce the file relating to memo dated 18.2.1988. He however produced before this Court the File No.223/F2/86-6, relating to WP No.16057 of 1996. On the note file of the said file, it is marked C.No.223/LTR/B2/86. In this file at page No.13, office copy of the memo dated 13.6.2006 sent to learned Government Pleader for Revenue was found. It is mentioned therein that, "the file relating to Government memo No.223/LTR/B2/86-6, dated 18.2.1988, is not available as it has been destroyed as per Rules due to efflux of time." The copy of the memo dated 18.2.1988 reads as under.

Copy of:

Government of Andhra Pradesh
Social Welfare Department

Memo.223/F2/86-6

Dated: 18.2.1988

Sub: T.W. – A.P.Sch.Areas Land Transfer Regulation, 1959 – Revision Petition u/s.6 of the Regulation – Filed by Sri Kopparapu China Venkateswarlu against the order of the Agent to Government, Khammam in CMA No.34/85 dated 07.4.1986 – Rejected.

Ref: From M/s.MRK Choundary, T.Jagadish and S.Siva Prasad, Advocates, Revision Petition dated 21.05.1986.

M/s. MRK Choundary, T.Jagadish and S.Siva Prasad, Counsel for the petitioner in the above revision petition which

was filed aginst the orders of the Agent to Government, Khammam, in CMA No.34/85 dated 07.4.1986 are informed that the Government do not see any reason to interfere with the above orders. The revision petition is hereby rejected.

M.V.Natarajan,
Secretary to Government and
Commissioner for Tribal Welfare

Section 6 of the Regulation confers revisional powers on the Government. There cannot be any doubt that the power conferred is quasi judicial in nature and the quasi judicial authority is not expected to pass an order as was done in this case. The controversy in the case, the points for consideration, the decision thereon with reasons, are basic elements that are to be found in any quasi judicial order. These elements are present in the order extracted hereinabove. Secondly there is no proof whatsoever before this Court that the memo dated 18.2.1988 has been communicated to the petitioner or to his counsel. Any quasi judicial order or any administrative order, which is not communicated to the person concerned, is no order in the eye of law. This is well settled proposition of law. For this reason alone, it is a fit case where the Government shall have to take up revision petition filed by the petitioner in 1986 treating it as pending, dispose of the same in accordance with law after giving adequate opportunity to the petitioner. Insofar as the impugned order passed by the MRO is concerned, the same proceeded as if there is no case filed by the petitioner pending, which obviously not correct. Therefore, the impugned order passed by the MRO on 24.7.1996 is set aside.

For the above brief reasons, the writ petition is allowed and the matter is remitted to the Government of Andhra Pradesh in Tribal Welfare Department with a direction to dispose of the revision petition filed by the petitioner against the orders of the Agent dated 07.4.1986 in CMA No.34 of 1985 filed against Case No.10/85/Kgm, dated 05.8.1985, of the SDC, Paloncha. This exercise may be completed within a period of three months from the date of receipt of a copy of this order, giving adequate opportunity to the petitioner. There shall be no order as to costs.

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(**V.V.S.RAO, J**)

August 09, 2007

NOTE:

Dispatch order copy in
One week.
(By order)
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